

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,)	Crim. No. 03-00200-01 HG
)	
Plaintiff,)	
)	
vs.)	
)	
JACK FRISBEE, (01))	
a/k/a "J-Man")	
a/k/a "J-Dog")	
Defendant.)	
_____)	

**ORDER GRANTING GOVERNMENT'S MOTION FOR REDUCTION
OF SENTENCE FOR SUBSTANTIAL ASSISTANCE**

On June 10, 2004, Defendant Jack Frisbee ("Frisbee") plead guilty to conspiracy to distribute and to possess with intent to distribute more than 50 grams of methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 846 (Count 1 of the Second Superseding Indictment), and also admitted to the forfeiture of his interest in certain property identified in the Indictment (Count 9 of the Second Superseding Indictment). (Doc. 183.)

On January 11, 2006, the Government filed a Motion For § 5K1.1 Downward Departure And Sentencing Recommendation based upon pre-sentence substantial assistance to government authorities. ("Motion for Downward Departure", Doc. 456.) The Government indicated in the Motion for Downward Departure that further relief pursuant to Fed. R. Crim. Proc., Rule 35 might be a possibility if Frisbee provided post-sentence assistance to the

Government. (Doc. 456 at 2.)

At the sentencing hearing on January 30, 2006, the Court granted the Government's Motion For Downward Departure. (Doc. 462.) The Court sentenced Frisbee to 180 months of confinement, and a term of 5 years of supervised release as to Count 1. The Court ordered that the Defendant's interest in the properties listed in the Amended Preliminary Order of Forfeiture, filed on October 27, 2004, and the Final Order of Forfeiture, filed January 30, 2006, (Docs. 264 and 460) be forfeited (Count 9).

On December 18, 2006, the Government filed a Protective Rule 35 Motion, ("Rule 35 Motion", Doc. 496), pursuant to Federal Rules of Criminal Procedure (Fed. R. Crim. P.), Rule 35. The Rule 35 Motion requests a reduction of Defendant's sentence for the substantial assistance the Defendant provided the Government authorities. The Government requested a deferral of consideration of the Rule 35 Motion pending an indictment in another case.

On September 25, 2007, the Government filed a Supplemental Rule 35 Statement pursuant to Fed. R. Crim. P., Rule 35. ("Supplemental Statement", Doc. 502.) The Supplemental Statement recommends a 30-36 month reduction of Frisbee's sentence on Count 1 from 180 months to 144-150 months.

On November 13, 2007, Frisbee filed a Supplemental Memorandum In Support Of The Government's Supplemental Rule 35

Statement. (Doc. 506.) Frisbee asked the Court to reduce his sentence to 100-105 months.

STANDARD OF REVIEW

Federal Rule of Criminal Procedure 35(b)(1) provides:

(1) In General. Upon the government's motion made within one year of sentencing, the court may reduce a sentence if:

(A) the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person; and

(B) reducing the sentence accords with the Sentencing Commission's guidelines and policy statements.

Federal Rule of Criminal Procedure 35(b)(2)(B) provides:

(2) Later Motion. Upon the government's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved:

. . .

(B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing; . . .

A Rule 35 motion is essentially a plea for leniency and is addressed to the sound discretion of the district court. United States v. Smith, 964 F.2d 885, 887 (9th Cir. 1992); United States v. Hooton, 693 F.2d 857, 859 (9th Cir. 1982).

ANALYSIS

The Court finds that Frisbee substantially assisted the Government in the investigation and prosecution of criminal

activity. A reduction of Defendant's sentence pursuant to Rule 35(b)(1) and (b)(2)(B) is appropriate. The Court rejects Frisbee's request for a reduction within a range of 75-80 months in light of the serious nature of the crime and Defendant's prior criminal record. Based on the nature of Frisbee's cooperation, the Court grants a sentence reduction of 30 months to be consistent with the Sentencing Guidelines and the Sentencing Commission's policy statements.

CONCLUSION

In accordance with the foregoing, the Court **GRANTS** the Government's motion to reduce Defendant's sentence. The Court sentences Frisbee to 150 months imprisonment. All other aspects of Frisbee's sentence remain unchanged.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, December 14, 2007.



/s/ Helen Gillmor
Chief United States District Judge

United States v. Jack Frisbee, a/k/a "J-Man", a/k/a "J-Dog", Crim. No. 03-00200-01 HG; ORDER GRANTING GOVERNMENT'S MOTION FOR REDUCTION OF SENTENCE FOR SUBSTANTIAL ASSISTANCE